

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHAEL EDWIN MCLEMORE, )

Petitioner, )

v. )

SCOTT R. FRAKES, )

Respondent. )

8:18CV567

MEMORANDUM AND ORDER

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Pending before me are two motions. One is a motion to stay and abey these proceedings so that Mr. McLemore, who stands convicted of murder, can return to the state court to present newly discovered evidence that he is innocent<sup>1</sup>. While that motion is not accompanied by a brief, at this moment it does appear to be frivolous.<sup>2</sup> The other motion is by Respondent seeking to extend the time for filing a brief as required by the progression order. This second motion is unrelated to the first. While I would typically grant Respondent's motion, we should address the motion to stay and abey first while holding the second motion in abeyance until the first motion can be resolved.

IT IS ORDERED:

1. The Respondent shall file a response, plus a brief, regarding McLemore's motion to stay and abey (filing no. 8) on or before the close

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<sup>1</sup> Presumably, he requests that I retain jurisdiction in order to avoid a potential federal statute of limitations problem should I dismiss this matter without prejudice so he can return to state court.

<sup>2</sup> This should not be taken as anything other than the most preliminary assessment of the motion. The motion may turn out to be frivolous or entirely lacking in merit.

of business on Monday, April 29, 2019. McLemore may file a reply no later than 17 days after the filing of Respondent's response and brief. (McLemore should understand that the Clerk must be in receipt of the reply within the 17 day period as I have already accounted for the prison mail box rule by giving him 17 days.)

2. The motion to extend the progression order date filed by the Respondent (filing no. 9) is held in abeyance.

DATED this 28<sup>th</sup> day of March, 2019.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge